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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 KENNETH WAYNE RICH,

11 Petitioner,

No. CIV S-05-892 MCE GGH P

12 vs.

13 MATTHEW MARTEL, Warden,

14 Respondent.

ORDER

15 _____/
16 Petitioner, a state prisoner proceeding with counsel, has timely filed a notice of
17 appeal of this court's August 26, 2008, denial of his application for a writ of habeas corpus.
18 Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C.
19 § 2253(c); Fed. R. App. P. 22(b).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
21 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
22 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues
23 satisfy the required showing or must state the reasons why such a certificate should not issue.
24 Fed. R. App. P. 22(b).


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1 For the reasons set forth in the magistrate judge's July 18, 2008, findings and
2 recommendations, petitioner has not made a substantial showing of the denial of a constitutional
3 right. Accordingly, a certificate of appealability should not issue in this action.

4 IT IS SO ORDERED.

5 Dated: October 7, 2008

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MORRISON C. ENGLAND, JR.
8 UNITED STATES DISTRICT JUDGE
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